

**County of Sullivan, NH**

**Type of Meeting:** Board of Commissioners Regular Business Meeting – Executive Session Minutes - Per RSA 91-A:3.II.c & d Pending Contract Issue  
**Date/Time:** Tuesday, July 10, 2012; 3:20 PM  
**Place:** Newport, NH – Remington Woodhull County Complex, County Administration Building, 14 Main Street, 1<sup>st</sup> Floor Commissioners Conference Room

**Attendees:** Commissioners Bennie Nelson – Chair, Jeffrey Barrette – Vice Chair and John M. Callum Jr. – Clerk, Greg Chanis – County Administrator, John Cressy – Facilities & Operations Director, Tom Wilson – Wilson Engineering Services (WES), Sharon Callum – Administrative Assistant/Minute Taker.

**Other attendees:** State County Delegates Paul LaCasse and Charlene Marcotte Lovett

**Agenda Item No. 5. Probable Executive Session Per RSA 91-A:3.II.c. & d. – Pending Contract Issue**

**3:20 Motion:** to go into Executive Session Per RSA 91-A:3.II. c & d to discuss a pending contract issue. **Made by:** Barrette. **Seconded by:** Callum Jr.  
**Discussion:** those invited into Executive Session were: Rep. LaCasse and Lovett, County Administrator and Minute Taker. **Roll call vote taken:** All three Commissioners voted in favor.

Mr. Chanis distributed a four page *New Hampshire Local Government Center Legal Q and A: The Inside Scoop on Nonpublic Sessions* article [Appendix A.1-4] and noted the Executive Session pertained to the biomass bidding process. He reminded all the Biomass Design / Building RFP was released in May 2012, they had 60 representatives from 13 different teams, they extended the bid due date to June 22<sup>nd</sup> in order to attain more detailed bids; they received eight (8) different bids. Chanis distributed a document showing the eight bids received [Appendix B.1-3], bids were listed in order of receipt and include the following companies:

1. Woodward & Curran
2. R.H. White Construction
3. Trumbell-Nelson Constructions
4. Baybutt Construction
5. J.C.N. Construction
6. Hutter Construction
7. Eckman Construction, and
8. Engineer Construction Services

Chanis briefed the Board on the various parts of the RFP and the request for four (4) Alternative biddings. Mr. Wilson noted there was an Alternative 5 addendum: to provide Single-Phase service to buildings attached to bio mass project. They noted the range of

bids was dramatic, the costs for alternatives were higher than expected from some bidders, they spent a week reviewing the bids and identified the top three (3) potential bids:

1. Woodard & Curran
2. J.C. N Construction
3. Eckman

Per Chanis, WES presented these three with follow up questions and a response deadline; based on responses, they invited two companies: 1) Woodard & Curran and 2) J.C.N. Construction, for follow-up interviews that occurred today. Mr. Wilson noted the shaded area on the "Bid Analysis" document [Appendix C] illustrated priority items where they wanted to capture most of the savings. He indicated Woodard & Curran bid was the most detailed and lowest cost – it was obvious to him they spent a lot of time 'sharpening their pencil', plus they visited the site five (5) times. Chanis noted they would still need to negotiate a contract and develop the final scope of work. The group discussed various specs on the proposed boiler system. Mr. Wilson discussed the proposed base design of system, including efficiencies; and discussed a school in Houlton Maine where he viewed one of Woodard & Curran's projects – he was very impressed with their work as it was a difficult installation in the space they needed to install the system. Mr. Chanis cited family references who work in the construction industry in the Portland area - though they have not worked with Woodard & Curran personally they have heard nothing but good things regarding the companies work. WES will follow up on references provided by Woodard & Curran. WES has all bids on their ftp website site. Mr. Chanis noted Woodard & Curran did not include an automatic ash handling system and he excluded Option 5 in the comparison spreadsheet in order to compare 'apples to apples'. It was noted that Woodard & Curran boiler system has a rake feeding system, which looks more robust - vibrating conveyors are used to shake out oversized chips, which are separated into a storage bin and can be thrown into the boiler or returned to supplier. Chanis discussed the *Estimated Project Cost with Woodard & Curran Bid* document [Appendix D], noting the following:

- Lawrence Electric: extend 3-Phase service to the hay barn and installed new transformers; \$44,000 already committed: trench dug, pipes done, and waiting for two transformers; Lawrence has quoted a cost of \$17,550 to rerun Single-Phase service to the Ahern building, tractor barn and hay barn.
- NH DES: this represents permit fees and modeling of emissions – County asked WES to prepare vs. waiting for contractor.
- Woodard & Curran expense includes an estimate of \$175,000 for installing one 2.5 mmbtu propane fired boiler bringing the total estimated contract expense with Woodard and Curran to \$2,864,803
- Sagerman Contract: As the County is using a USDA loan, the County is required to file a NH District Area form – a historical assessment of the Unity Complex. They've contacted four historians and received two proposals - Rockingham County did the same for \$5,000
- In House Tractor Barn Conversion: Due to the pricing of this alternate in the proposals, it makes more sense to connect Ahern Building with the steam line and then connect the Tractor Barn to the Ahern heat exchanger with underground insulated PEX tubing. This work in addition to two (2) new hanging hot water heaters would cost approximately \$25,000 if done in house. It was noted that the

Tractor barn is the maintenance shop – used for storage of the snow plows and space for carpentry projects.

Chanis reviewed the revenue sources, which include:

- NCRCD Grant of \$75,000: approved,
- NH State Public Utilities Commission grant of \$300,000: approved,
- U.S. DOE EECBG Grant: \$51,330 was allocated to the project already,
- USDA WBU Grant: have not heard status of \$250,000 application submitted,

The net County Biomass Expense is: \$2,794,793

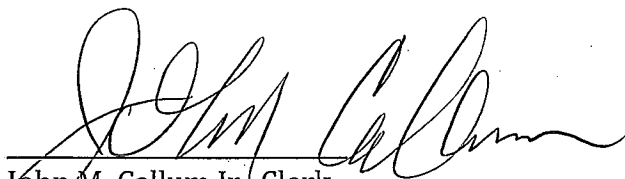
Mr. Wilson discussed other aspects, such as the propane load; payback in savings over an 8-9 year period – he estimates annual cash flow could be over \$100,000; overall unit life is estimated at 30 years - annual replacing grates, maintenance, is taken out of that.

Chanis requested approval to send a letter of intent to Woodard & Curran; and to attain further numbers and written assurances on items Woodard & Curran had not put into writing, such as 'no charge' to upgrade Ahern Building to serve tractor barn and they'd said pitch of roof would not affect cost; plus, he wants a firm dollar amount on the additional boiler.

**4:21 Motion: to authorize County Administrator to send letter of intent to award and begin negotiating a contract with Woodard & Curran, based on information in front of us today, and return to another meeting with final contract for the Commissioners approval. Made by: Barrette. Seconded by: Callum Jr. Voice vote: All in favor.**

**4:27 Motion: to come out of Executive Session. Made by: Barrette. Seconded by: Callum Jr. Voice vote: All in favor.**

Respectfully submitted,



John M. Callum Jr., Clerk  
Board of Commissioners

JMC/sjc

Date minutes approved and released: @ July 24, 2012 meeting

Appendix A.1

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# New Hampshire Town and City Article Index

## Legal Q and A: The Inside Scoop on Nonpublic Sessions

*New Hampshire Town and City*, June 2012

New Hampshire's Right to Know Law, RSA Chapter 91-A, is a critical statute for local officials and employees to understand. One of the more difficult areas to navigate is nonpublic sessions. Recently, we have received an incredible number of legal inquiries about this subject. Here are some of the most frequently-asked questions about nonpublic sessions.

### Q. What's the difference between a nonpublic session and a "non-meeting"?

A. Gatherings of board members are either "meetings" or they are not. A meeting is the convening of a quorum (majority) of the members of a public body for the purpose of discussing or acting upon any matter within the body's supervision, control, jurisdiction, or advisory power. RSA 91-A:2, I.

A nonpublic session is something that meets the definition of a meeting, but which the public cannot attend. RSA 91-A:3, I. All of the formalities of a meeting apply to a nonpublic session except for the "open to the public" requirement. So, when a quorum of the board members is gathered to talk about or vote on any official business, it is a meeting. If they want to exclude the public from that discussion, they can do so only for the specific reasons listed in RSA 91-A:3, II. (If you're interested in what those reasons are, check the statute! Better yet, copy it and bring it to every meeting so you won't forget.)

On the other hand, a so-called "non-meeting" is a gathering of board members that either (1) doesn't meet the definition of a meeting, or (2) is specifically exempt under the law. A gathering falls outside the definition of a meeting if, for example, fewer than 50 percent of the members are present. Similarly, a chance, social, or other gathering falls outside the definition of a meeting if the members are not there to discuss business and make no decisions, such as attending training or a memorial service or a party. There are also four categories of gatherings that are specifically exempt under RSA 91-A:2, I:

- Strategy or negotiations regarding collective bargaining;
- Political caucuses;
- Circulation of draft documents among members when those drafts simply formalize decisions previously made in a properly-held meeting; and
- Consultation with legal counsel.

When a board has a non-meeting, that gathering does not exist for purposes of the Right to Know Law. No notice or minutes are required, and the public does not have a right to attend.

**Q. Do we have to post notice of a meeting if all we plan to do is have a nonpublic session?**

**A.** Yes! To enter a nonpublic session, a board must already be in a properly-noticed public meeting. Someone makes a motion to enter nonpublic session and the reason for it. The board takes a roll call vote on the motion and, if it passes, enters nonpublic session. RSA 91-A:3, I. When the nonpublic session ends, the board goes back into public session.

**Q. We can't take votes in a nonpublic session, can we?**

**A.** Yes, you can. A board may do anything in a nonpublic session it may do in a public session, so long as the subject matter is appropriate for a nonpublic session. This means discussions, motions, and votes are all permitted. Remember, this is still a formal meeting under the law, even if the public may not attend.

**Q. If we vote on something during a nonpublic session, do we have to announce it and report the vote when we come out of nonpublic session?**

**A.** No, although you may. In the 1970s, the statute required that decisions made during a nonpublic session (then called "executive session") be reported when the board went back into a public session. However, this provision has been amended significantly since that time. As it is now in effect, the statute does not require any "reporting" after a nonpublic session. If a board would like to report on its decisions when back in public session, it may do so. However, there are a variety of reasons a board might wish not to do that. If the minutes of the nonpublic session have been sealed, the board should not then reveal the contents of those minutes to the public. (See more about minutes below.) In addition, if a decision is made to terminate an employee, it may be a much better idea to tell the employee before telling the public. If a decision is made regarding strategy in an ongoing lawsuit, reporting that strategy to the public may undermine its effectiveness.

**Q. Who has a "right" to attend a nonpublic session?**

**A.** The members of the board holding the meeting. That's it. No part of the Right to Know Law grants anyone other than board members a right to attend a nonpublic session, whether that person is an employee, the ordinary minute-taker for the board, or an attorney. A board may choose to invite others to attend, but there is some risk. If the minutes are sealed, the others in attendance are not be bound by the same obligation of confidentiality that binds board members. This can create significant problems if those attendees decide to share that information with the public.

What often confuses people is that the law gives certain people the right to require a board to have the proposed discussion in a **public** session in two specific situations:

Discussion of the dismissal, promotion, compensation, discipline, or investigation of any employee. RSA 91-A:3, II(a). Some employees, but

A.3

not all of them, have a right to have these matters discussed in public. This right comes either from a different statute or from an employment or collective bargaining agreement. For example, permanent police officers have a statutory right to a public hearing before they are disciplined or terminated. RSA 41:48. Librarians have a similar right under RSA 202-A:17. Similarly, most collective bargaining agreements include the right to a public meeting, and some individual employment contracts provide that right. Note that this right to a public meeting is **not** contained in the Right to Know Law. When there is such a right, the employee must be notified in advance of the planned nonpublic session. If the employee asks the board to conduct the session in public, the board must comply.

Discussion of matters which would likely affect adversely the reputation of any person, other than a member of the public body holding the meeting. RSA 91-A:3, II©. When this is the case, the person whose reputation is at stake may ask the board to conduct the discussion in public, and the board must comply.

**Q. If we want to take a vote to seal the minutes, should we do it before or after we come out of the nonpublic session?**

**A.** That is up to you. In either case, sealing the minutes requires a 2/3 vote and is proper when (a) divulgence of the information would have an adverse effect on someone's reputation (other than a board member), (b) divulgence of the information would render a proposed action ineffective, or © the information involves emergency functions related to terrorism. RSA 91-A:3, III.

This vote may be taken while still in nonpublic session, in which case the information about the vote is recorded in the minutes of the nonpublic session. This may make sense if the discussion about sealing the minutes involves details about the exact information the board is considering sealing. However, the public needs to know that the minutes were properly sealed. This means that the vote to seal and its results should be announced as soon as the board comes out of nonpublic session and be reported in the public minutes.

Alternatively, if the board believes it can discuss and vote on sealing the minutes in the public session without revealing any of the sensitive information, it may wait to take the vote until it is back in public session. Either approach is correct under the law.

**Q. If we talk about something in a nonpublic session, is that information confidential?**

**A.** Maybe. If the minutes were not sealed, then the information about the nonpublic session will become public no later than 72 hours after the meeting. RSA 91-A:3, III.

However, if the minutes were sealed, then the information is confidential. In fact, the legislature considered this issue so critical that it added language to another statute to make the disclosure of such information a violation of an official's oath of office. An official who does this may be removed from office by a petition to the superior court. RSA 42:1-a.

Specifically, an officer violates his/her oath of office when he or she discloses to the public any information learned through that person's official position if (a) a public body properly voted to seal the minutes and the information would constitute an invasion of privacy, adversely affect someone's reputation other than a board member, or render proposed municipal action ineffective; or (b) the officer knew or should have known that the information was exempt from disclosure under RSA 91-A:5, and that its disclosure would constitute an invasion of privacy, adversely affect someone's reputation other than a board member, or would render proposed municipal action ineffective.

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**Q. Who can see the minutes of a nonpublic session?**

**A.** It depends whether or not the minutes were sealed. If the minutes were not sealed, they become available to the public within 72 hours after the meeting. RSA 91-A:3, III. If the minutes were sealed, they remain sealed until some point in the future when a majority of board members vote to unseal them because the reasons for sealing them no longer apply.

While minutes are sealed, they may be viewed only by the now-current board, **as a board**. This means that no single board member has the right to review sealed minutes unless a majority of the board votes to permit it.

*Local officials in New Hampshire Municipal Association member municipalities may contact LGC's legal services attorneys for more information on this and other topics of interest, Monday through Friday, 8:30 a.m. to 4:30 p.m., by calling 800.852.3358, ext. 3408. School officials should contact the New Hampshire School Boards Association attorney at 800.272.0653.*

Appendix  
B-1

County of Sullivan, NH  
Attachment A Bid Form: Design Build Request for Proposals for The Sullivan County NH, Unity Complex Biomass Project

BID INFORMATION	Bid 1 - Date/Time: 6/22/12 1:35PM	Bid 2 - Date/Time: 6/22/12 1:50 PM
1.1.A. Bidder	Woodward & Curran	R.H. White Construction
1.2.A. Base Bid	\$2,727,948	\$4,364,145
1.2.B.1. Biomass Combustion System	\$786,738	\$1,676,639
1.2.B.2. Boiler Housing & Chip Storage Building	\$1,139,666	\$1,653,286
1.2.B.3. Backpressure Steam Turbine/Generator	\$248,765	\$187,961
1.2.B.4. Steam & Condensate Piping & Building Interconnection	\$552,779	\$846,259
1.3.A.1. Bid Guarantee	✓	✓
Schedule of Alternates		
1.4.A.1. Alternate 1: Add (A), Deduct (D), No Change (NC), Not Applicable (NA)		
1.4.A.2. Alternate 1: Dollar Amount Cleaver Bunkers	0	\$241,242
1.4.B.1. Alternate 2: Add (A), Deduct (D), No Change (NC), Not Applicable (NA)		
1.4.B.2. Alternate 2: Dollar Amount Roof TOPS	\$48,100	\$167,354
1.4.C.1. Alternate 3: Add (A), Deduct (D), No Change (NC), Not Applicable (NA)		
1.4.C.2. Alternate 3: Dollar Amount Ahorn	\$91,930	\$156,217
1.4.D.1. Alternate 4: Add (A), Deduct (D), No Change (NC), Not Applicable (NA)		
1.4.D.2. Alternate 4: Dollar Amount Carpenter	0	\$192,541

5. Electrical

\$59,195



County of Sullivan, NH  
Attachment A Bid Form: Design Build Request for Proposals for The Sullivan County NH; Unity Complex Biomass Project

Bid 3 - Date/Time: 6/22/12 2:11 PM	Bid 4 - Date/Time: 6/22/12 2:22PM	<sup>NO</sup> Bid 5 - Date/Time: 6/22/12 2:53PM	Bid 6 - Date/Time: 6/22/12 2:57PM
Trumbell-Nelson Construction	Baybutt Construction	J.C.N Construction	Hutter Construction
\$3,600,000	\$3,139,725	\$2,874,000	\$3,627,500
\$1,489,862	<del>\$648,000</del> 643,000	\$84,000	\$889,600
\$779,556	\$399,000	\$1,144,000	\$899,412
\$554,956	\$284,000	\$256,000	\$238,322
\$675,626	\$568,000	\$670,000	\$881,858
✓	✓	✓	✓
\$239,269	\$262,000	\$136,000	\$105,723
\$196,776	\$157,000	\$66,000	\$108,831
\$135,711	\$271,000	\$111,000	\$155,573
\$143,707	\$219,000	\$104,000	\$99,948
Electrical 121,441	\$98,000	\$80,000	\$71,137
6 Stark Kalkstein	Default \$39,000		

B.3.

County of Sullivan, NH  
Attachment A Bid Form: Design Build Request for Proposals for The Sullivan County NH, Unity Complex Biomass Project

Bid 7 - Date/Time: 6/22/12 2:58PM	Bid 8 - Date/Time: 6/22/12 3:16 PM	Bid 9 - Date/Time: 6/22/12 _____	Bid 10 - Date/Time: 6/22/12 _____
Eckman Construction	Engineer Construction Services		
\$3,179,000	\$3,438,011		
\$725,000	\$540,000		
\$475,000	\$1,033,774		
\$215,000	\$342,820		
\$1,030,000	\$1,521,417		
✓	✓		
\$163,000	\$90,098		
\$92,000	\$81,890		
\$166,000	\$136,923		
\$110,000	\$102,914		
Electrical \$79,000	\$61,918		

Alternate pricing in Proposal

**Sullivan County NH Biomass project  
Bid Analysis**

Appendix C

		Woodard and Curran	JCN and Harriman	Eckman
Base Bid		2,727,948	2,874,000	3,179,000
*Alternate 1	Moving CB Boiler to new building	285,250	136,000	163,000
Alternate 2	RTU conversion	48,100	66,000	92,000
Alternate 3	Ahern Connection	91,930	111,000	166,000
Alternate 4	Tractor Barn Conversion	0	104,000	110,000
Alternate 5	Single phase UG electrical	in base bid	80,000	79,000
<b>Adjustments</b>				
option 5 in base bid		-56,000		
Architectural upgrades		0		
Alternate heat dissipation		?		
Ash Handling System		\$52,825		
<b>Comparitive Totals</b>		<b>\$2,864,803</b>	<b>\$3,051,000</b>	<b>\$3,437,000</b>
*includes 2 new 2.5 mmBtu/hr boilers in biomass building				

Estimated Project Cost  
Woodward and Curran Bid

Appendix D,

Project Line Item	Cost
WES	85,000
Lawrence Electric	62,320
NH DES	4,500
Woodward And Curran	3,039,803
Sagerman Contract	4,500
In House tractor barn conversion	25,000
<b>Estimated Total Project Cost</b>	<b>3,221,123</b>

<b>Total Estimated Project Cost</b>	<b>3,221,123</b>
<b>Grant Funding</b>	
NCRCD Grant	-75,000
PUC Grant	-300,000
EECBG Grant	-51,330
USDA WBU Grant	????
<b>Net County Biomass Expense</b>	<b>2,794,793</b>